

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs June 23, 2009

STATE OF TENNESSEE v. DAVID HASTINGS

Direct Appeal from the Criminal Court for Bradley County
No. M-06-213 Carroll Ross, Judge

No. E2009-00068-CCA-R3-CD - Filed September 23, 2009

A Bradley County Criminal Court determined that the appellant, David Hastings, violated the terms of his probation and ordered him into custody to serve the remainder of his four-year sentence for aggravated burglary. On appeal, the appellant contends the trial court abused its discretion in revoking his probation. Based upon our review of the record and the parties' briefs, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court are Affirmed.

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J. and JAMES CURWOOD WITT, JR., J., joined.

Larry D. Wright, Cleveland, Tennessee, for the appellant, David Hastings.

Robert E. Cooper, Jr., Attorney General and Reporter; Clarence E. Lutz, Assistant Attorney General; Robert Steve Bebb, District Attorney General; and Cynthia Lecroy-Schemel, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

I. Factual Background

On December 11, 2006, the appellant pled guilty to three counts of aggravated burglary. He was sentenced to four years in prison and ordered to serve six months in confinement before being released on probation. The present probation violation report was filed on August 1, 2008,¹ alleging that the appellant failed to comply with the terms of his probation. In particular, it alleged that he failed to report to the probation office as instructed and failed to pay the amounts he owed in court costs, restitution, and fees.

¹ The record reflects that the Affidavit of Probation Violation was signed on July 31, 2008, and then filed-stamped July 32, 2008. We presume the actual filing date was August 1, not July 32.

The trial court held a hearing on this matter on December 8, 2008. At that hearing, the State called the appellant's probation officer, David Dodson. Mr. Dodson testified that the present violation report was actually the second issued against the appellant. The first was issued on October 17, 2007. It alleged that the appellant had (1) failed to verify that he obtained employment; (2) not followed instructions regarding reporting; (3) tested positive for marijuana; and (4) only paid a small portion of his probation fees and court costs. On January 14, 2008, the trial court found that the appellant had violated the terms of his probation and ordered him to serve sixty days in custody before returning to probation.

Mr. Dodson further testified that he issued the present violation notice because the appellant stopped reporting to the probation office. The appellant last met with Mr. Dodson on June 10, 2008; he did not attend the regular reporting meeting in July. Later in July, Mr. Dodson sent the appellant a letter instructing him to contact the probation office immediately. The appellant did not respond to the letter and did not report for his August meeting. In addition, Mr. Dodson could not reach the appellant at any of the telephone numbers he had given the probation office. Furthermore, Mr. Dodson testified that, although the appellant had made some progress on paying his probation fees, he had not paid any of his outstanding court fees.

Mr. Dodson also testified that the appellant had previously informed him of some medical issues he encountered through his job. After his release from custody, the appellant went to work for a company named Building Services. However, he only worked there for approximately two months because in April 2008 he was hospitalized with what the appellant claimed was job-related carbon monoxide poisoning. The appellant informed Mr. Dodson that he was receiving medical treatment for his condition and considering a worker's compensation suit against his employer.

The appellant also testified at the December 8 hearing. He stated that he suffered from work-related carbon monoxide poisoning in April 2008. He was hospitalized for a time and had retained counsel to consider potential legal recourse. Since his discharge from the hospital, he had thirteen follow-up appointments with his doctors for, among other things, short-term memory problems arising from the poisoning. The appellant acknowledged that he missed the July meeting with Mr. Dodson, but he explained that his absence was a result of his short-term memory problems. He explained that he simply had his probation appointments "mixed up" with his doctor's appointments. He further admitted that he did not attend a reporting meeting in August, but he spoke with Mr. Dodson over the telephone sometime that month and explained his medical issues. He testified that he did not believe his absences from the regular meetings would be problematic because he believed Mr. Dodson understood that they were simply the result of a mix-up caused by his medical problems. The appellant also testified that he was unaware of the full extent of the amount he owed in restitution and court costs.

The court concluded that the appellant violated the terms of his probation. It revoked the appellant's probation, stating:

[I]t's evident to the Court you're not going to comply with the rules of probation. You pled guilty in December of '06, and essentially have never gone to probation, maybe a scattered time or two along the way; haven't done any, haven't paid on

anything. . . . Haven't called your probation officer, haven't done anything. I don't have any choice this time--this is your second time through with the same kind of things--to revoke your probation and commit you to TDOC to serve the balance of your term.

The appellant now appeals, arguing that the trial court had no evidentiary basis from which to draw these conclusions. In particular, the appellant contends that his medical condition justifies the breach of the conditions of his probation. Thus, the appellant asserts, the trial court abused its discretion.

II. Analysis

Under Tennessee Code Annotated section 40-35-311, trial courts have "broad authority" to revoke a suspended sentence. State v. Stubblefield, 953 S.W.2d 223, 224 (Tenn. Crim. App. 1997). The statute provides that the trial court may revoke a defendant's probation upon a finding of a violation by a preponderance of the evidence. Tenn. Code Ann. § 40-35-311(e). Consequently, although a defendant "has a liberty interest" in his probation, the appellate court reviews the trial court's decision to revoke probation for abuse of discretion. Stubblefield, 953 S.W.2d at 225-26. Our supreme court's decision in State v. Harkins succinctly captures the analysis:

a trial judge may revoke a sentence of probation or a suspended sentence upon a finding that the defendant has violated the conditions of his probation or suspended sentence by a preponderance of the evidence. . . . The judgment of the trial court in this regard will not be disturbed on appeal unless it appears that there has been an abuse of discretion. . . . In order for a reviewing court to be warranted in finding an abuse of discretion in a probation revocation case, it must be established that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the conditions of probation has occurred. . . .

811 S.W.2d 79, 82 (Tenn. 1991) (citations omitted). In short, the appellant has a significant burden to overcome.

We conclude that the trial court did not abuse its discretion. The appellant acknowledged that he did not attend his regular reporting meeting in July 2008. The record reveals that the appellant did not respond to Mr. Dodson's July letter instructing him to contact the probation office immediately. The record also shows that the appellant has made only minimal payments with respect to his probation fees, restitution, and court costs. Moreover, as the trial court noted, this was the second time the appellant had received a violation report for failing to comply the conditions of probation. Given the appellant's indisputable failure to comply with the rules of probation, we cannot say that the trial court abused its discretion.

III. Conclusion

Based upon the record and the parties' briefs, we affirm the judgments of the trial court.

NORMA McGEE OGLE, JUDGE